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EXAMINER

VONCH, JEFFREY A

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1788

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

DETAILED ACTION

Response to Amendment

1. Applicant's amendments filed December 1st, 2010 have not been entered.
2. The additional limitations of "consisting of" and wherein the vacuum formed film comprises "a thermoplastic polymer selected from a group consisting of polyethylene, polypropylene, nylon, and ethylene vinyl acetate" raise new issues that would require further search and consideration and therefore are not able to be entered.

Response to Arguments

3. Furthermore, even if the amendments were entered, Applicant's arguments are only partially persuasive.
4. Regarding to Applicant's argument that nothing would suggest Huton eliminate one of the nonwoven layers, the Examiner concedes that Hutson teaches only a composite with nonwoven layers on both sides.
5. Regarding Applicant's argument that Huton teaches broken fibers in the nonwoven web, the Examiner is puzzled by what is being set forth. In the specification and Declaration, there is nothing to differentiate the type of IMG stretching from that of Hutson [0057]. Hutson also uses IMG rollers as well. Where in the limitation "activation stretched to create access areas in the nonwoven fibrous web" is use of IMG rollers or a specific result from using them?

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6. The term "access areas" is vague. According to the official definition in Declaration, "an area where the film is more exposed to fluids through the nonwoven as compared to other areas of the nonwoven" [17], a few fibers could be displaced to create an access area. However, the Declaration proceeds to further clarify that access areas are fibers that are merely separated, not broken, and their placement is randomized. These limitations may or may not be true of the IMG stretching method used by Applicant but the claim (or specification) states neither of these structural limitations as being required by the composite or access areas.

7. The description of a particular type of activation stretching by IMG rollers in the Declaration also is not in the claims or specification and its current inclusion does nothing to differentiate it from the activation stretching done in Hutson. The Examiner concedes that Hutson's fibers may break unlike Applicant's but both have described the same process of IMG roller activation stretching in their specification. Applicant's original description of the IMG stretching process was meager at best [page 7, lines 24-32]. The limitations requiring the separation of fibers rather than breaking them and randomized access area placement were added by the Declaration.

8. Lastly, even if the particular structural requirements from the particular IMG roller activation stretching were available in the original claims or specification, many processes other than IMG would create randomized access areas by separating fibers rather than breaking them such as fluid (air/water) rearrangement. If Applicant desires a particular type of IMG, then the resulting product should not only reflect that in the claims but also the specification.

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9. Applicant argues that Hutson teaches broken areas in registration with the apertures of the film. The Examiner maintains that the surface of the film either through the aperture walls or the actual surface of the film would be shown upon activation stretching. There is no claimed part in Applicant's process or product that would differentiate it from that of Huton's (vacuum lamination/aperturing, followed by activation stretching). The Examiner maintains that the end result would be the same. Furthermore, causing breaking in exact registration with film apertures through a process like IMG roller stretching is found to be highly unlikely.

10. Also, it is not clear from the original disclosure where Applicant obtained the limitation of "the surface of film is exposed through said access areas" [page 3, lines 5-9 & 29-30; page 4, lines 16-17; & page 7, lines 24-25. The original specification merely states that "the recesses in the first layer provide access to the second layer". How does that translate to the above limitation?

11. Applicant argues that none of the films in Hutson are non-elastic. This might be true but is not required by the claim. Furthermore, Hutson teaches a low crystallinity polyethylene and/or ethylene vinyl acetate [0049] which is a thermoplastic polymer in that it can be melted for reformation (i.e. vacuum lamination/shaping). Hutson also teaches that the elastic layer can have an elongation ranging from 50 to greater than 700% [0047], the lower boundary of which is well within the range of the materials selected.

12. Applicant argues that the Examiner's definition of extensible is not reasonable. The Examiner would have been more than happy to have been used Applicant's definition had one been provided. However, that not being the case and with Applicant in a previous Office action

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making an effort to hang patentability on this term, caused the examiner to interpret the term non-elastic. Upon further consideration and review of the term extensible in the prior art (where there was not a consistent definition), the term non-elastic was not seen as barring extensible. In fact, Hutson's definition of extensible [0030] is the very definition Applicant finds unreasonable.

13. Furthermore, given that this term depends largely on the materials used (and how they are put together but Hutson teaches a bonded carded nonwoven) and given no definition in the specification, the Examiner sought to use the materials required in the specification. There it was found that preferred materials are polyesters, polyolefins, rayons, acrylics, cotton, other cellulose materials, etc. Hutson teaches its nonwovens to be formed from the exact same materials [0051].

14. Applicant further argues that the prior art has given meaning to the term extensible. Although the Examiner found conflicting definitions, the most general consensus seems to be "elongatable to a certain percentage (ranging from 10-50%) of the original length without failure". Typical nonwoven webs have an elongation of less than 100% according to U.S. Patent No. 5,494,736 (col. 5, lines 6-8). Even if the Examiner was to incorporate one of the "standard" definitions in the prior art, this would put Taylor's non-elastic layers well within the prior art definition of extensible, especially with the preferred polyethylene embodiment [0065].

15. In summary, Applicant's claim is largely vaguer than the invention sought, as realized in the most current response and Declaration, especially in light of the lack of definitions available in the specification and original claims for individual terminology.

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Conclusion

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeff A. Vonch whose telephone number is (571) 270-1134. The examiner can normally be reached on Monday to Thursday 8:30-6:00 EST.

17. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Tarazano can be reached on (571) 272-1515. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

18. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J. A. V./

Jeff A. Vonch

Patent Examiner, Art Unit 1788